



May 3, 2023

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, Public Employees for Environmental Responsibility (PEER), requests certain information and communications from the Environmental Protection Agency (EPA) regarding records about EPA's response to an oversight letter by Congressmember Debbie Dingell.

Background

On July 8, 2022, Congresswoman Debbie Dingell sent a letter to Debra Shore, Regional Administrator for EPA Region 5, "with utmost urgency concerning the ongoing contaminated groundwater releases entering the Detroit River from the BASF site in Wyandotte, Michigan."¹ The letter went on to say:

My office is again receiving reports of alarming rates of contamination releases entering this waterway, which was initially referenced and troubling to learn in your April 5, 2022 response letter regarding the status of the dredging project in the Upper Trenton Channel. On behalf of my concerned constituents and our shared commitment to protect human health and our environment, it is critical that the U.S. Environmental Protection Agency (EPA) swiftly develop an action plan for enforcement actions and develop resources to better inform the public to prevent further public harm.

The letter notes that the BASF site is known to be a source of PFAS pollution to the drinking water intake of the city of Wyandotte. And that EPA has had BASF under an Administrative Order on Consent since 1994, "so it is concerning to learn that BASF may not be in compliance with the order as contaminated groundwater continues to enter the Detroit Rivers." The letter then asks EPA to answer five questions regarding the data it has available and what monitoring, testing, and solutions EPA has planned or implemented for the site.

The letter goes on to say:

I urge EPA to escalate enforcement to protect Wyandotte residents immediately. Additionally, we need to be able to assure the citizens of Wyandotte that their drinking water is safe, while also staying focused on completing the important work to remediate the Detroit River and protect the Great Lakes for everyone in the region. EPA should develop a robust community outreach program and a website to better inform the public about the corrective action order, testing results, and timeline of this contamination.

PEER seeks records that demonstrate EPA's answer(s) to the Congresswoman's requests and that illustrate action taken by EPA to address the issues raised in the letter.

¹ Letter from Member of Congress Debbie Dingell to EPA Regional Administrator Debra Shore, July 8, 2022, https://debbiedingell.house.gov/uploadedfiles/20220708_dingell_epa_basf_contamination.pdf.

Requests

PEER requests the following records for the time period July 8, 2022, to present:

1. Emails, documents, memos, letters, messages, meeting materials, or other records which indicate EPA's response to Congresswoman Dingell's July 8, 2022, letter. This should include any attachments or further follow-up if there were supplemental materials provided.
2. Records regarding the records described in #1. This includes any communications within EPA, with the permitted party, or with state or local regulators to facilitate the response.
3. Records of how EPA "escalate[d] enforcement to protect Wyandotte residents" as described in the letter.
4. Records of EPA communications regarding EPA efforts described in #3.
5. Records of EPA development of "a robust community outreach program" as described in the letter.
6. Records of EPA communications regarding EPA efforts described in #5.

If the above requests are unclear, result in an abnormally large number of results, or otherwise impracticable please contact the requester to provide clarification or narrow the scope of the request accordingly.

PEER specifically requests that a search be conducted of the agency's SharePoint, Google Drive, DropBox, or any similar system of file storage and management, as well as files stored locally on any relevant custodian's hard drive or cloud-computing OneDrive system.

Scope of Request

Form of Records

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

This request includes all final documents that have ever been within the agency's custody or control, whether they exist in agency "working," investigative, retired, electronic mail, or other files. All electronic records should be delivered in their original file format with original metadata and any attachments included. Physical records should be scanned or otherwise converted into electronic format.

Responsive records should include electronic messages (including email, texts, chats, and instant messaging via Google, iMessage, WhatsApp, Facebook, Slack, Microsoft Teams, Skype, and any similar services) stored on any desktop, laptop, tablet, server, commercial document sharing service (Microsoft Teams or OneDrive) or mobile device, as well as handwritten materials, if they have not been digitized. Please also provide all attachments or linked materials if they are in the agency's possession or control.

For electronic records, please provide all records in their native file formats (i.e. not converted to PDF) with all metadata included, and for records such as emails which have files embedded or attached, please provide all attachments in their native formats. If records can only be produced as PDFs, we request all records be text searchable and OCR formatted.

Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or, if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .pdf file.

For instant messages, plain text or screenshots of text message conversations are acceptable consistent with guidance issued by the National Archives and Records Administration.

Withholdings and Exemptions

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

Fee Waiver Request

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. § 552 (a) (4)(A)):

1. The records concern the operations or activities of the Government.

The FOIA request is, by its terms, limited to identifiable activities of EPA, EPA collaboration with other units of government, and communications made to EPA.

2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.

If the public sees these materials, it will help enhance their understanding of how EPA protects water quality and public health, an issue of importance to the ongoing protection and management of public resources.

3. The release of these requested records will contribute significantly to public understanding of the governmental activities.

The nature of the information should inform the public about EPA’s ability to implement and enforce laws including the Resource Conservation and Recovery Act, the Clean Water Act, and the Safe Drinking Water Act, and how it manages this work and collaborates with other units of government.

PEER intends to provide the requested information to members of Congress and its relevant committees, as well as policymakers in Iowa. We also intend to disseminate it to the general public though –

- Release to the news media;
- Posting on the PEER web page which draws 5,000-7,000 unique visitors per month; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, media coverage of EPA's and states' failures to fully address PFAS contamination and other threats to public health from the chemical industry underlines the broad public interest in this material.

4. Disclosure would not serve a commercial interest of the requestor.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue code.

Please Request any Necessary Clarification or Narrowed Scope

If in the process of conducting a search for records responsive to this request it appears that a large quantity of irrelevant material is being included or further relevant material may not be captured by the specific terms of the request, or any other concerns related to the timeliness or completeness of the response arise, please contact the undersigned at hkingston@peer.org.

In the event an exceptionally voluminous or complex set of potentially responsive records requires review, please advise me of the need to make rolling productions, and a schedule on which PEER's request can be fully answered.

If you have any questions about this FOIA request, please contact me by phone or by email. I look forward to receiving the agency's final response within 20 working days.

Thank You,

/s/ Hudson Kingston

Hudson B. Kingston

Litigation and Policy Attorney

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